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Fraud in the DBE Program

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What is Fraud

- Common definition
 - “A deliberate depiction practiced so as to secure unfair or unlawful gain.”
- Federal criminal code definition of mail & wire fraud
 - “Devis[ing] or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises”
 - Penalties range from maximum 20-30 years imprisonment, plus fines

DBE Program Requirements

- All recipients of federal transportation funds are required to have programs to encourage participation by DBEs
- Contractors must describe in their bid package what DBEs are involved & what work they are doing
- Sometimes contractors believe it's easier to cheat than follow the requirements of the program

Who Reports Fraud

- Federal, state & local subrecipients
- Disgruntled employees of the agency or contractor
- Investigative journalists
- Self-disclosure
- Competitors

Types of Fraud Schemes

- DBE “front” companies
 - DBE does not perform the work or a “commercially useful function”
 - Another firm uses the DBE’s logo, signage, etc. but gives the appearance of DBE participation
 - Invoices are “run” through the DBE’s accounts & payrolls
 - DBE is paid a small percentage to go along (e.g., 3%-5% of subcontract price)

Types of Fraud Schemes, cont.

- False ineligibility
 - DBE owner does not belong to one of the recognized socially or economically disadvantaged groups
 - DBE provides false information concerning size or financial status
 - DBE hides assets or gives false statements concerning origination of capital
 - DBE owner does not manage or control the business day-to-day

Types of Fraud Schemes, cont.

- Special challenges of WBEs
 - Increased fraud in WBE enterprises
 - Usually a relative (wife, daughter, sister, etc.) of a prime or subcontractor
 - False statements concerning ownership & control
 - False statements concerning financial information & capital
 - No knowledge, expertise, or licenses in the type of business being operated

DBE Program Fraud Indicators

- Annual affidavits of “no change” not submitted
- Joint bank accounts (Prime/DBE)
- Joint payrolls
- Regular equipment sharing
- Companies share address / phone number
- Wrong or covered company name on vehicles
- Ghost employees or certified payroll irregularities
- Little or no supervision of DBEs

DBE Program Fraud Indicators, cont.

- Small DBEs in unusual businesses (bridges, structural steel)
- DBEs perform no commercially useful function related to the scopes of work of the project
- DBEs have no business offices & little equipment
- Prime contractor always uses the same DBEs
- Absence of written contracts

DBE Program Fraud Indicators, cont.

- DBE owner lacks background, expertise, or equipment to perform the subcontract
- Supply orders/payment handled by non-DBE
- Prime negotiates contracts for the DBE
- DBE owner off-site or full-time employment elsewhere
- Workers switch between DBE/prime payrolls (“payroll jumping”)
- Pay special attention to joint venture arrangements

Recent Prosecutions for DBE Program Fraud

- Washington State Contractor (2014)
 - \$200,000 civil settlement with USDOT
 - DBE's work was completed by a non-DBE but goal credit was claimed
- Port Authority of NY & NJ (2014)
 - \$600M project; \$70M in DBE credit claimed
 - Fraudulent joint venture agreement
 - M/WBEs' work performed by prime & another non-certified sub

Recent Prosecutions for DBE Program Fraud, cont.

- Penn DOT (2014)
 - Largest DBE fraud case in history of USDOT
 - Went on for 15 years
 - Prime performed the work
 - Prime's owner received 51 month sentence; prime's president received 84 month sentence; DBE received 33 month sentence
 - \$119M in restitution
 - Several Penn DOT officials were allegedly involved

Why the Increase in DBE Fraud

- Lack of oversight
- Weak sanctions or no action
- DBE Program mismanagement
- Inadequate communication in the field
- Lack of fraud training/awareness
- Political patronage

Fraud Prevention

- Regularly conduct commercially useful function reviews
- Review certified payrolls
- Conduct periodic self-evaluations of DBE program process & procedures, including certification
- Address any DBE irregularities quickly
- Provide supportive services to DBEs
- Act swiftly
- Impose meaningful sanctions

What to Do If You Suspect DBE Fraud

- Document the activity you suspect to be fraudulent
- Seek an explanation for irregular activity, if possible
- Copy all relevant documents & take photographs, if possible
- Do not alert those involved or others to suspicions
- Report your concerns or suspicions to management and/or referral to DOT-OIG, as appropriate
- Can report directly to DOT-OIG & remain confidential 800-424-9071

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